IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 382 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITABEN MEGHJI PITHA

Versus

HABIBKHAN MAHMADKHAN PATHAN

Appearance:

1. Criminal Revision Application No. 382 of 2002

MR AR THACKER for Petitioner No. 1

HL PATEL ADVOCATES for Respondent No. 1-8

MR SS PATEL APP for Respondent No. 9

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 04/09/2003

ORAL JUDGEMENT

The petitioner, original complainant, has preferred this revision application u/s.397 read with

s.401 of the Code of Criminal Procedure, 1973 (for short, "the Code") in order to challenge an order dated 03/08/02 recorded by the learned Addl. Sessions Judge, Junagadh in Cr.R.A.No.28/2002 under which the learned Judge partly allowed the revision application filed by the contesting respondents herein, and set aside the order of the learned Magistrate and directed that the investigation may be entrusted to the Sub-Divisional Police Officer.

2. The facts may be briefly stated as follows;

2.1 The petitioner herein, filed a complaint in respect of offences punishable u/s.395 and 504 of IPC as well as for an offence punishable u/s.3 of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act"). The matter was investigated by the concerned police officer and at the end of investigation, a B Summary Report was submitted. After hearing, the learned Magistrate found that this was not a fit case for granting B Summary. Therefore, the learned Magistrate disagreed with the said report and did not accept the same and directed an inquiry by the Court u/s.202 of the said Code by order dated 14/06/01.

2.2 After inquiry, the learned Magistrate found that the offences alleged were made out and therefore, the learned Magistrate directed that the complaint be registered for the aforesaid offences, against the contesting respondents and warrants be issued against the contesting respondents. The said order was passed by the learned Magistrate on 30/03/02.

2.3 Feeling aggrieved by the said order of the learned Magistrate, the contesting respondents preferred Cr.R.A.No.28/2002. The learned Addl. Sessions Judge heard the same and found that the inquiry should not have been conducted by the learned Magistrate; that, the investigation ought to have been conducted by the Dy.S.P. or an Officer, not below the rank of Dy.S.P. which has not been done and therefore, the investigation may be entrusted to the Sub-Divisional Police Officer and he should submit a report within 30 days, before the learned Chief Judicial Magistrate. The said order was passed on 03/08/02.

3. Feeling aggrieved by the said order of the

learned Addl. Sessions Judge, the petitioner has preferred this revision application before this Court. Along with other reasons and other grounds, the petitioner has contended that there was an order in favor of the petitioner, passed by the learned Magistrate as aforesaid and the said order was challenged in the revision application before the Sessions Court by the contesting respondents and the revision application was decided, without joining the petitioner as party and without giving an opportunity to the petitioner of being heard.

4. Rule was issued and in response to the service of notice of Rule, M/s.H L Patel Advocates appeared on behalf of the contesting respondents and Mr.S S Patel learned APP appeared on behalf of the State.

5. On hearing, it is found that the petitioner was the complainant. The petitioner had put up a case before the trial court stating that B Summary Report may not be accepted. The trial court had accepted her request and an inquiry u/s.202 of the said Code was undertaken by the learned Magistrate. The petitioner appeared at the said inquiry and also brought witnesses. Ultimately, the trial court found, that a case for the aforesaid offences was made out and therefore, the complaint was registered. It is an admitted position that the contesting respondents preferred the aforesaid revision application before the Sessions Court and it is also an admitted position that the present petitioner was not a party to the said revision.

6. We can gather from the revision memo filed by the contesting respondent and placed on record at page 24 that the petitioner was not a party to the said revision application. The copy of the judgment at page 31 also shows that the petitioner was not a party to the said revision. This means that the revision application is disposed of by the Sessions Court, without giving an opportunity to the petitioner of being heard. Since, this was a matter in which the petitioner was in picture right from the beginning and since, at her instance, B Summary Report was rejected and since, at her instance, process was issued and complaint was registered, I am of the opinion that it was necessary on the part of the Sessions Court, to hear the petitioner, which has not been done. In that view of the matter, the judgment and order of the Sessions Court have to be held to be illegal and therefore, it would be necessary for this Court to interfere with the said order of the Sessions Court, in exercise of the powers u/s.397 of the said Code.

7. For the foregoing reasons, this revision application is allowed. The impugned order of the Sessions Court dated 03/08/02 passed in Criminal Revision Application No.28/2002 is ordered to be set aside. The matter is remanded back to the Sessions Court and therefore, the aforesaid Criminal Revision Application shall be restored on file and the Sessions Court will deal with and decide the said revision application, at its original number and decide the same, after giving an opportunity to the present petitioner of being heard, by joining the petitioner as co-respondent. Rule is made absolute accordingly.

(D. P. Buch, J.)

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